



JUNE 2017 GLOBAL IMMIGRATION UPDATE

Posted on June 5, 2017 by Cyrus Mehta

Feature Article:

EFFECTS OF INCREASED ENFORCEMENT, SECURITY, NATIONALISM ON IMMIGRATION LAW: AN OVERVIEW – This article provides an overview of recent developments in several countries with respect to increases in enforcement, security measures, and nationalism.

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Feature Article:

EFFECTS OF INCREASED ENFORCEMENT, SECURITY, NATIONALISM ON IMMIGRATION LAW: AN OVERVIEW

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Canada

The election of Donald J. Trump as the 45th President of the United States and the hostile political climate that has ensued in relation to immigration issues has had a significant impact on Canadian immigration. The initial enforcement

of President Trump's Executive Order, "Protecting the Nation from Foreign Terrorist Entry into the United States," has significantly affected the seven countries named in the ban. Many citizens of these countries living in the United States, fearful for their future, have turned to Canada as an alternative. Canadian immigration lawyers have witnessed an increase in the interest of highly skilled individuals living and working in the United States in relocating to Canada.

The interest in Canada has also increased due to the temporary pause in the issuance of H-1B visas in the United States, effective April 3, 2017. This is in stark contrast with the recent commitment of Immigration, Refugees and Citizenship Canada (IRCC) to faster processing times for work permits for highly skilled workers. It remains to be seen whether Canada will seize this opportunity to attract more foreign talent. It is interesting to note that this political climate in the United States coincides with Canada's Express Entry selection system inviting the highest number of candidates to apply for Canadian permanent residence since the program began on January 1, 2015.

President Trump's election has also been a trigger for individuals to cross the border into Canada to make refugee claims. In light of the Safe Third Country Agreement between Canada and the United States, which stipulates that individuals must make a refugee claim in the first country in which they land, many individuals in the United States have been illegally crossing the border to avoid being caught under the agreement (which only applies at official ports of entry). Although the exact numbers of individuals making refugee claims in Canada is not known, the increase is significant and has captured the attention of news outlets across Canada. Available statistics indicate that the number of asylum seekers intercepted at the border in the first two months of 2017 is equal to approximately half of the total number of asylum seekers intercepted in all of 2016. As the weather warms up in Canada, it is expected that even more individuals will be making their way to Canada, thus putting more and more pressure on Canadian Border Service Agency officers to monitor borders and guide asylum seekers in making refugee claims.

Italy

On April 12, 2017, the Italian Parliament approved measures to accelerate asylum procedures, boost repatriation of undocumented migrants, and speed up deportations of those whose asylum requests have been rejected.

The Law Decree 17 February 2017, n. 13, signed into law on April 12 (the so-called *Minniti-Orlando* immigration law, named after its promoters), introduces several new provisions designed to streamline the processing of asylum requests as well as the deportations of those whose requests are rejected.

Under the new rules:

- One of the two levels in the Italian court system to which asylum seekers can currently appeal in case of rejection is cancelled, and the deadline for submitting such a request is set to 1 month. As a result, an asylum ruling can now be appealed only once instead of twice. However, the right to appeal to Italy's Supreme Court of Cassation (*Corte Suprema di Cassazione*) remains in place. Twenty-six new sections in courts across the country are created, specialized in immigration.
 - Two hundred and fifty people are to be recruited in the next two years to work on public committees specialized in dealing with asylum requests, with the purpose of strengthening the committees assessing the applications and ensuring faster processing times.
 - Asylum seekers hosted in reception centers will be registered as residents with the local municipalities and may choose to take part in volunteer or community service work.
 - Identification and expulsion centers (*Centri di Identificazione ed Espulsione*) across Italy are increased in number and become "holding centres for repatriation" (*Centri di permanenza per il rimpatrio*), each with a capacity not exceeding 150 people, with a total of 1,600 persons, located near major transport infrastructures.
 - Summary judgment for expulsion measures is directed to those considered a threat to public health or security and for prevention of terrorism.
 - Illegal immigration is countered with an electronic information system (*Sistema Informativo Automatizzato*, connected with the Schengen Information System).
 - Repatriations will occur faster due to cooperation with home countries through bilateral agreements.
- United States** Once a person is issued a visa or is traveling without a visa under the U.S. Electronic System for Travel Authorization (ESTA) program, U.S. Customs and Border Protection (CBP) has been reported to have increased scrutiny and raised the usual lines of questioning, specifically for business travelers and those entering on U.S.

work visas. Travelers under the Visa Waiver Program should be prepared for questioning if a CBP immigration inspector determines that they have not been previously interviewed and sufficiently vetted before traveling. The "Hire American" portion of the order calls on the U.S. Secretaries of State, Labor, and Homeland Security and the Attorney General to "propose new rules and issue new guidance to supersede or revise previous rules and guidance if appropriate, to protect the interests of U.S. workers in the administration of our immigration system, including through the prevention of fraud or abuse." In addition to directing agencies to consider changes in the H-1B lottery system, the Executive Order also calls for rigorous enforcement of U.S. immigration laws. Immigration attorneys have already seen an increase in the rate of requests for further evidence issued by U.S. Citizenship & Immigration Services (USCIS). Such requests may challenge the nature of the position offered—for example, whether it is a "specialty occupation" that normally requires a bachelor's degree or higher in a specific specialty field—and question the individual's qualifications for employment in the specialty field. Specific areas of scrutiny include entry-level computer programmers and analysts, as well as staffing companies and foreign workers involved in "third party placement," which is when the usual place of activity is at a client site rather than the employer's premises. This trend is likely to continue as USCIS and other agencies move forward in implementation of the new administration's enforcement-driven policies.

- Specifically, the agencies are directed to "suggest reforms to help ensure that H-1B Specialty Occupation Nonimmigrant Visas are awarded to the most-skilled or highest-paid petition beneficiaries."
- Also, President Trump signed the "Buy American and Hire American" Executive Order on April 18, 2017. The order sets forth his administration's policy to "maximize...the use of goods, products, and materials produced in the United States" and to "rigorously enforce and administer the laws governing entry into the United States of workers from abroad."
- Scrutiny has increased at U.S. consulates and ports of entry. Following the injunction on enforcement of President Trump's revised travel ban, U.S. Secretary of State Rex Tillerson issued diplomatic cables on March 17, 2017, directing all U.S. consular posts to increase scrutiny of visa applications and applicants for security threats. U.S. consular officers are

expected to ask more detailed questions about applicants' backgrounds. Consular officers also must refer applicants to the Fraud Prevention Unit for mandatory social media history checks if they were present in an area when it was controlled by the "Islamic State" (ISIS) or if the officer determines that an applicant may have ties to ISIS or other terrorist groups. This directive has caused a slowdown in visa issuance and an increase in visa denials.

- The new provisions do not apply to unaccompanied minor migrants for whom a specific law was recently approved (Law 7 April 2017, n. 47). That law introduces a series of provisions to ensure comprehensive protection for unaccompanied foreign children by means of an effective system guaranteeing legal and health assistance, accurate age assessment, standards for reception centers and child facilities, and support for integration of children.

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Country Updates:

AUSTRALIA

This article summarizes significant changes to the 457 visa system that will replace the current 457 visa by March 2018. Important changes have already been implemented. The changes occurred without warning.

On April 18, 2017, Australia's Prime Minister, Malcolm Turnbull, announced major changes to the Temporary Residence Subclass 457 program. The changes will also affect the Employer Nomination Scheme (ENS) permanent residence visa program for skilled workers.

The 457 Visa will be phased out and replaced with a Temporary Skills Shortage (TSS) visa, which will comprise two streams: Short-Term (2 years) and Medium-Term (4 years).

With immediate effect, the Consolidated Sponsored Occupation List (CSOL) will be renamed as the Short-Term Skill Occupations List (STSOL), which will be reviewed every 6 months.

Over 200 occupations have been removed from that list. As the change is immediate, all 457 applications currently being processed related to occupations that have been removed from the list will not be approved and

applicants will be afforded the opportunity to withdraw the applications and receive a refund of the filing fee.

Conversely, any applications filed on or after April 19, 2017, must nominate occupations on the STSOL or on what is known as the Medium and Long-Term Strategic Skills List (MLTSSL).

Visas granted on or after April 18, 2017, relating to nominations of occupations on the STSOL will only be granted for a two-year period. After two years, a further and final period of two years may be sought. As of March 2018, visa holders can only be sponsored for a permanent visa if they are nominated for a position appearing on the MLTSSL.

457 Visa applicants granted visas on or after April 18, 2017, and holding MLTSSL positions may receive a four-year visa. Holders of the four-year visa will be able to be nominated for a permanent visa after a three-year period of employment with the sponsor.

Also as of March 2018, visa applicants will need to have at least two years of work experience prior to applying for a 457 visa before any nominated position. Apparently those nominated for STSOL positions will be required to demonstrate an intention to remain temporarily only in Australia.

Effective immediately are caveats that add layers of requirements on work experience or are occupation-specific. For example, in certain instances, employers may only nominate certain occupations if the employer is able to demonstrate a turnover of a \$1 million per annum and a workforce of not less than five.

Below is a timeline of these changes.

April 19, 2017

- 216 occupations removed from CSOL with 24 occupations restricted to regional Australia.
- CSOL re-named as STSOL and MLTSSL introduced.
- Visa applicants nominated for MLTSSL occupations to receive a four-year visa while those nominated for STSOL will be limited to two years. A second two-year visa may be applied for at the end of the first term.
- At present persons nominated for permanent visas under the direct stream of the Subclass 186 (ENS) may be nominated for a position from

either list. This will cease in March 2018.

July 1, 2017

- Occupation Lists to be reviewed.
- The current English-language salary exemption threshold of \$96,400.00 will be removed. This means that all 457 Visa applicants will be required to have the equivalent of IELTS Level 5. It is assumed that the current country-of-origin exemption will apply.
- Training benchmarks will be clarified.
- Police Clearance Certificates will become mandatory.
- Regarding ENS, IELTS level 6 in each component is required.
- Also regarding ENS, a maximum age requirement of 45 (time of application) will apply to Direct Entry Stream applicants. The current 50-year age limit will continue for Temporary Transition applicants.

December 31, 2017

- The Department of Immigration and Border Protection will begin collecting Tax File Numbers for all 457 holders and other employer-sponsored migrants. These data will be matched with Australian Tax Office records to check that 457 visa holders are not underpaid.
- The Department will publish details of sponsors sanctioned for failing sponsorship obligations.

March 2018

- The 457 Visa will be abolished and replaced by the TSS Visa, which will have two streams: the Short-Term Stream of up to two years and a Medium-Term Stream of up to four years.
- The Short-Term Stream (STS) will include the following criteria:Renewal: Onshore renewal once only.

(i)Renewal: Onshore renewal once only.

(ii) Occupations:

(1)For non-regional Australia – STSOL will apply.

(2)Additional occupations available for regional employers.

(iii) English language requirement: Minimum IELTS of 5 with a minimum of

4.5 in each component.

(iv) Genuine entry: A genuine temporary entrant requirement.

- The Medium-Term Stream (MTS) will include the following criteria:

(i) Renewal: May be renewed onshore; pathway to permanent residence available after three years.

(ii) Occupation:

(1) MLTSSL applies with additional occupations for regional employers.

(ii) English language requirement: IELTS Level 5 with 5 in each test component.

- Eligibility criteria for both streams:

(i) Work experience of at least two years.

(ii) Labor market testing mandatory subject to international trade obligations.

(iii) Salaries to be paid must meet market rate and the Temporary Skill Migration Income Threshold (currently \$53,900.00).

(iv) Character clearance certificates are required.

(v) Introduction of a non-discretionary workforce test, details of which are unknown.

(vi) Training requirement to be strengthened.

- ENS March changes:

(i) MTSSL only applies with additional occupations available for regional Australia;

(ii) Salaries must meet Temporary Skilled Migration Income Threshold and market rate;

(iii) PR period extended from two to three years;

(iv) Must have three years of relevant work experience;

(v) Must be under 45 years of age at time of application;

(vi) Training requirements are strengthened.

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ITALY

Citizenship reform will be discussed in the Senate in June.

Further discussion of the reform of Italian citizenship law is scheduled for June 15, 2017, in the Senate. If approved, the bill (N. 2092) will bring a twofold change to the current legislation: significant changes to the current *jus soli* law, and the introduction of a new route to citizenship, *jus culturae*.

Possible changes to the current *jus soli* route (birthright citizenship) include:

- Foreign children born in Italy would be considered Italian by birth if at least one of their parents has acquired permanent residence status (i.e., is in possession of a permanent EC residence permit if non-EU or, for EU citizens, has acquired permanent right of residence);
- Foreign children born in Italy and who have resided legally without interruption until reaching 18 years of age would now have 2 years instead of 1 to apply for citizenship.

The new *jus culturae* route would include:

- Foreign children born in Italy or who have arrived by the age of 12 may acquire the right to citizenship after at least 5 years of education in Italy.
- Foreign children who arrived in Italy before the age of 18 could apply for citizenship if they have resided regularly in Italy for at least 6 years and have successfully completed a cycle of education.

Italian citizenship is currently regulated by Law No. 91/1992. In October 2015, the Chamber of Deputies approved the reform bill, including a moderate version of the *jus soli* and *jus culturae* laws. Since then, the bill had been discussed in the Senate but an agreement had not been reached between the parties.

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RUSSIA

Rules of address registration have been issued for the FIFA World Cup 2018 and the FIFA Confederation Cup 2017. Also, restrictions have been lifted for Turkish nationals traveling to Russia for tourism, business, or work purposes.

In accordance with Presidential Order N. 202 of May 9, 2017, "On security measures during the World Cup FIFA 2018 and Confederation Cup FIFA 2017," rules of address registration are subject to change. The Confederation Cup began June 1 and will run until July 12, 2017, in Moscow, St. Petersburg, Kazan, and Sochi. The World Cup will be held from May 25 until July 25, 2018, in Moscow, St. Petersburg, Volgograd, Ekaterinburg, Kazan, Kaliningrad, Nizhni Novgorod, Samara, Rostov on Don, Saransk, and Sochi.

The changes will affect both Russian and foreign citizens. Russian citizens who have arrived in these cities during the tournaments are expected to apply within three calendar days of arrival to register their arrival at the place of temporary residence.

Foreign nationals who have entered Russia during these events should register their addresses within one calendar (not working) day of the arrival date. Foreign nationals arriving in Russia during a weekend or public holiday should register with immigration authorities within 24 hours of arrival. Immigration authorities will be working during weekends and public holidays.

The new address registration rules apply to all foreign nationals regardless of the purpose of the visit, including for tourism, business, or work. The new rules are applicable only during the tournaments in the cities noted above.

The only exception to the new rules applies to Russian citizens and foreign nationals who are participants in the Confederation Cup and World Cup, FIFA official representatives and related organizations, and national football (soccer) associations that are included on the FIFA accredited list.

Also, in accordance with Presidential Order N. 224 of May 31, 2017, "On termination of particular economic measures related to Turkish Republic," Turkish nationals may travel to Russia for tourism, business, or work purposes. The limitations in place since November 2015 have been terminated.

The Order comes into force as of 31st of May 2017.

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New Publications and Items of Interest